

**Federal Defenders
OF NEW YORK, INC.**

Southern District
52 Duane Street-10th Floor, New York, NY 10007
Tel: (212) 417-8700 Fax: (212) 571-0392

David E. Patton
Executive Director

Southern District of New York
Jennifer L. Brown
Attorney-in-Charge

October 13, 2017

BY ECF and Email

The Honorable Valerie E. Caproni
United States District Judge
Southern District of New York
40 Foley Square
New York, NY 10007

**Re: *United States v. Kevin Johnson*
 15 Cr. 565 (VEC)**

Dear Judge Caproni:

We write in response to the Court's order to show cause why all records should not be unsealed in this matter. We firmly agree that the Court should unseal all documents to the extent they have been sealed or redacted to effectuate the protective order.

On independent grounds, however, the Court approved redaction of any reference to Mr. Johnson's genetic profile and a small number of narrowly-tailored redactions related to topics in the Defense sentencing memorandum. These redactions are unrelated to the protective order or the source code and must remain under seal.

I. *There is no legitimate public interest in Mr. Johnson's personal identifying genetic information.*

At no time did the protective order covering the source code have anything to do with Mr. Johnson's personal genetic profile. No party's position as to the protective order should affect Mr. Johnson's right to privacy in his genetic information.

Mr. Johnson's genetic profile—developed from a buccal swab obtained by court order and entered into a database maintained by the New York City Office of Chief Medical Examiner (OCME)—is highly specific, personal, and otherwise unobtainable information. Rule 21.4 of the SDNY ECF Rules and Instructions provides for redaction of this material. Accordingly, the Court approved each of Mr. Johnson's applications to redact his profile from the public record. *See* Dkt. No. 89, 92.

The previously-approved redactions of Mr. Johnson's profile included four exhibits to the defense's opening *Daubert* brief:

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- Exhibit C (one line each of Figures C.4 and C.9.);
- Exhibit P (one line);
- Exhibit Q (one line);
- Appendix I (one line on page 3, figure 3)

In addition, in the defense's reply brief, the Court approved redactions of the genetic profile of another individual:

- Appendix to Exhibit A in the reply brief. *See* Dkt No.106.

While Dr. Butler is not our client, the same privacy principles should apply.

II. *The redactions from Mr. Johnson's sentencing submission are in accordance with the Southern District's ECF Policy*

The Court granted the Defense's application to redact from Mr. Johnson's sentencing letter and attachments information that was "sensitive information" or information requiring "caution" as described in the ECF Policy of the Southern District of New York. *See* Dkt No. 134. The Court echoed this finding orally at Mr. Johnson's sentencing. *See* Transcript, p. 3, lines 16-17. These redactions are unaffected by the protective order and should remain in effect.

We respectfully request that the Court maintain the genetic profile information detailed above and the items in Mr. Johnson's sentencing memorandum under seal or redaction.

Thank you for considering this request.

Respectfully Submitted,
/s/
Christopher Flood
Sylvie Levine
Counsel for Mr. Kevin Johnson

cc: Sebastian Swett
Assistant United States Attorney (by ECF)

Florence Hutner, General Counsel
New York City Office of Chief Medical Examiner (by Email)

Media Freedom and Information Access Clinic, by:
David A. Shulz (by Email)

Hannah Bloch-Wehba (by Email)